

BASIS STATEMENT

Chapter 574, “Siting and Operation of Road Salt and Sand-Salt Storage Areas”

This rule describes the registration, siting and operational requirements that new sand/salt storage areas and some existing state and private sand/salt storage areas must meet in order to be exempt from having to obtain a waste discharge license. The rule also exempts sand/salt piles below a specified size, establishes a compliance date for existing sites, and describes guidelines for granting a variance from the siting and/or operational requirements of the rule.

The Board of Environmental Protection received comments at a public hearing held on July 19, 2001 in Augusta, Maine. Written comments were accepted into the record until 5:00 P.M. on July 31, 2001.

LIST OF COMMENTERS

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| 1. A. Allen Murphy | Seven Islands Land Company |
| 2. Michael Barden | Maine Pulp and Paper Association |
| 3. Gordon Billington | Town Manager, Town of Standish |
| 4. Larry Nadeau | Director of Public Works, City of Saco |
| 5. Bruce A. Van Note | Maine Department of Transportation |
| 6. Brian Pickard | Maine Department of Transportation |
| 7. Ivan Hanscom | Jonesboro Sand and Gravel |

RESPONSE TO COMMENTS

The following paragraphs contain summaries of comments in the record along with responses from the Department of Environmental Protection.

General Comments

1. **Comment:** One commenter expressed his recommendation for water quality efforts to continue with all parties – federal, state and local – partnering towards the effort. He also stated that the need for funding is extremely important where federal and state efforts will promote good will with local governments to work together. (4)

Response: The Department agrees that funding for the sand and salt pile program needs to be maintained, however, those decisions are made by the Maine Legislature, not the Department. No revisions are being made in response to this comment.

Section 2. Applicability

2. **Comment:** The Department received several comments requesting the exempted pile size in Section 2(C)(1) be changed from 30 cubic yards to 200 - 500 cubic yards. The commenters believed that 30 cubic yards was too small an amount to provide a meaningful exemption. (5, 7)

Response: An exemption for pile size was included in the proposed rule as a way to limit the scope of the program to those piles large enough to be a significant threat to the environment. The Department agrees that 30 cubic yards is too small an exemption but believes that even 200 cubic yards is too large. The Department is increasing the exempted pile size to 100 cubic yards. The Department feels this amount better accomplishes the goal of the exemption without further jeopardizing ground water quality as a larger pile size exemption might. Therefore, Section 2(C)(1) now reads as follows: “A storage area that contains 100 cubic yards or less of sand-salt mixture at any time.”

3. **Comment:** Section 2(C)(2), exemption for Priority 1, 2, and 3 sites, was not needed because Sections 2(A) and 2(B) excluded them already. (5)

Response: In the proposed rule, the Department wanted to be as explicit as possible about who needed to comply with the rule. Previous draft versions of the rule generated significant comments from Priority 1, 2, and 3 owners/operators, even though they were exempt from it. No revisions are being made in response to this comment.

Section 4. Operational requirements for new storage areas and for state and private Priority 4 and Priority 5 storage areas.

4. **Comment:** One commenter proposed that the operational requirements of Section 4(A) and 4(C) relating to paved pads and covers should apply only to Priority 4 sites and not to Priority 5 sites. In support of this position, the commenter stated: (1) As Priority 5 sites have all homes served by a public water supply, there is no measurable environmental benefit to requiring pads and covers where you are not measuring ground water quality; (2) This position is consistent with the Legislature’s intent of providing differential environmental protection based on priority; and (3) This change will save the State’s taxpayers \$80,000 in the cost for pads and \$120,000 annually in covering costs for sand/salt piles operated by the Department of Transportation. (5)

Response: No revisions are being made in response to this comment for several reasons.

First, from an operational point of view, a permanent pad and cover provide definition to the pile and work area. With this rule, operators will be required to clean-up sand/salt spilled following loading and mixing and a pad provides an easy surface for clean-up. Many sand/salt storage sites without a pad and cover leave the pile spread all over the place and loose materials everywhere. This “pile spread” increases the salt discharges to both ground and surface water, often having a devastating impact on nearby vegetation. The Department documented many such sites with impacts to trees, wetlands and small

streams during the assessment of sand/salt piles in 1999 and hopes to stem some of that environmental damage through the use of pads and covers.

Second, from an environmental point of view, the Department cannot dismiss the impact to ground water, even at Priority 5 sites. The ground water classification laws of this state place all ground water in category GW-A, suitable for a public water supply. The Department must at all times strive to protect and, where needed, work towards restoring ground water to its classification level. The Department cannot lower expectations even in areas where the ground water is not currently being used as drinking water. In addition, 16% of all Priority 5 sites sit atop significant sand and gravel aquifers. Allowing continued pollution to these areas places the State's future sources of public water in jeopardy.

5. **Comment:** One commenter has requested a separate set of operational elements for temporary sand/salt piles used for winter logging operations. Because logging operations move over time, the commenter believes it would make no sense for pads and/or buildings to be constructed, then to be abandoned after a couple of years. As an alternative to the pads described in Section 4(A), the commenter proposes that piles be placed on a base of fine gravel and 6-mil black polyethylene. In support of this request, the commenter states that these piles usually contain a lower ratio of salt to sand (1:50 for wood operations compared to 1:16 to 1:10 for highway maintenance). (1)

Response: Earlier draft versions of Chapter 574, dating back to 1994, contained a special section which addressed the special concerns of winter logging operations. That section was removed from the proposed rule for two reasons. First, when most sand/salt piles were re-registered with the Department in 1999, the Department found that sand/salt piles used to maintain wood roads had not moved in the fourteen years between the 1985 and 1999 registrations. The claim that these are not permanent piles and that they are moved as operational needs change was not demonstrated.

Second, in March 2000, a draft version of Chapter 574 was sent to all owners/operators of registered sand/salt piles seeking input on specific issues in the rule. The Department asked if the section on storage areas associated with logging roads should be retained. We received no comments in support of retaining that section and one comment stating that all sand/salt piles should be held to the same standards. For those reasons, the Department removed the special provisions for storage areas associated with logging operations and will not be amending the proposed rule to add that section at this time.

The ability to create temporary sand/salt storage areas, however, has merit. The Department has been approached several times in the last few years by both municipalities and private contractors who found themselves in need of temporary storage. Reasons have varied from unfinished or collapsed storage buildings to sudden revocation of storage site leases. Generally, these temporary storage requests are for time periods from a few weeks to several months. To allow for the possibility of temporary storage, Section 6(B), "Variance from operational requirements", is amended to include: "the duration for which the storage area will be used" as a factor used in consideration of

a variance from the requirements for a permanent pad and cover.

6. **Comment:** It would be helpful to add examples of what “a well-secured, durable, waterproof product” is. (3, 5)

Response: The Department agrees that this phrase, while meant to be broad enough to encompass a number of covering materials, is too vague. Therefore, Section 4(C)(2) has been amended as follows: “Covering with a well-secured, durable, waterproof product, including, but not limited to, tarps and asphalt-treated sand.”

7. **Comment:** At the beginning of Section 4(C), the word “Completed” should be inserted at the start of the first sentence such that it reads: “Completed sand and salt piles must be covered.” (5)

Response: While the Department understands that there are times when a sand/salt pile cannot be covered (during the building process and when material is being removed), we have concerns that using the term “completed” may present compliance problems if operators attempt to delay covering their sand/salt pile by stalling or staggering the pile construction process. The Department will allow a reasonable time period of pile construction, based on pile size and operational constraints of the owner, beyond which the sand/salt pile will need to be covered. No revisions are being made in response to this comment.

8. **Comment:** In Section 4(C)(2), it is suggested that the phrase “at times of access” be deleted and substituted by “at all times winter conditions can occur.” This change would allow for the working face of the pile to remain open all winter so that the pile need not be continuously reshaped and recovered.(5)

Response: “All times winter conditions can occur” can encompass eight months in most parts of the State. The Department believes it is counterproductive to the purpose of this rule to leave 10 to 25% of the sand/salt pile open to the elements for that length of time.

It is a reasonable expectation for an owner/operator to cover the open face of the pile, particularly when no storms are predicted and the sand/salt pile may not be used for a period of time or when weather conditions are warming such that the next storm may be a rain event. However, the Department does recognize the effort this involves and believes some accommodation should be made so that a pile is not covered one day only to be uncovered the next day when it snows. Therefore, Section 4(C)(2) has been amended a second time to read: “... at all times except for a working face at times of access and for not more than 72 hours following the last access.” This will allow sand/salt pile operators up to three days to close the open face. During a six-day period with winter storms occurring every 48 hours, it is conceivable that the sand/salt pile would have an open face for all six days. If this limitation continues to remain troublesome, the Department will entertain a request for an operational variance from the owner/operator with regards to covering the open face.

Section 5. Compliance Schedules

9. **Comment:** The Department received two conflicting comments regarding the compliance schedule. First, one commenter stated that everyone – new and existing pile owners/operators – should be required to comply with the rule at the same time, i.e., not allowing additional time for existing Priority 4 and 5 sites to come into compliance or setting a date in the future for new and existing sites to come into compliance. The second commenter, the Department of Transportation, requested the deadline for compliance by MDOT be moved two years to October 1, 2004, so that funds for compliance may be appropriated in the next state biennial budget. (7, 5)

Response: The Department believes that it is reasonable to expect anyone commencing sand/salt storage activities after the effective date of the rule to be in compliance with the rule from the start of operations. No changes will be made with regards to that comment.

The Department also recognizes the fiscal constraints of MDOT. For both the sake of equity and simplicity, the compliance date for all state and private, Priority 4 and Priority 5 sand/salt piles will be extended by two years. Section 5(B) will be amended as follows: “...must comply with the operational requirements of this chapter by October 1, 2004.”

Section 6. Variance

10. **Comment:** A commenter sought clarification of Section 6(B) so as to focus priority for granting a variance on the ability to control runoff from the pile and not necessarily link this to a siting feature, such as proximity to a major river. (2)

Response: Section 6(B) simply provides a list of factors to be considered and does not assign priority to any particular one. The Department anticipates a great variability to the variance requests and does not believe one factor can be weighed more over others. No revisions are being made in response to this comment.

11. **Comment:** The same commenter recommended that the Department include some type of “rebuttable presumption” language in Section 6(B), whereby a variance is presumed based upon showing that stormwater runoff for a sand/salt pile is being managed on site through collection and disposal to an on-site wastewater treatment facility. Such a management scheme is likely to be more effective than covering the pile. A rebuttable presumption provision would also eliminate the need for the Department to issue variances on a case-by case basis, thus decreasing Department costs to administer the rule. (2)

Response: While the Department is interested in ways to decrease administration costs of this rule, providing a rebuttable presumption for runoff collected and disposed through a treatment facility is inappropriate at this time. As stated above, the Department anticipates a great variability to variance requests and, at least in the near future, would like to document those requests, perhaps for use in future rule making. No revisions are being made in response to this comment.

MINOR TYPOGRAPHICAL ERRORS AND CLARIFICATIONS

1. Section 2(A): In the first line, “Department” is changed to lower case. This is consistent with rule drafting guidance and with other references in the rule.
2. Section 4, ¶1: Two uses of “and” are changed to “or.” The sentence now reads: “The following operational requirements apply to both new storage areas and Priority 4 and Priority 5 storage areas owned or operated by state or federal governments or other public and private entities...” This is consistent with usage in Sections 2(B) and 5(B).
3. Section 4(E): In the first line, “operators” is changes to “operator.” This is consistent with other references in the rule.
4. Section 5: In the heading, “Compliance Schedules” is changed to “Compliance schedule.” This change in case is consistent with the remainder of the rule and drafting guidance.